EXHIBIT A

VRG PROPERTIES COMPANY

November 15, 2007

VIA E-MAIL AND OVERNIGHT DELIVERY

Mr. Brain Newman, P.E.,
Mr. Paul Sanders
California Regional Water Quality Control Board, Central Valley Region
Underground Storage Tank Program
11020 Sun Center Drive #200
Rancho Cordova, California 95670-6114

Re: Draft Cleanup and Abatement And Monitoring And Reporting Program Orders (Former E-Z Serve#100875, 1017 Douglas Blvd, Roseville, Placer County, LUSTIS #310124)

Dear Mr. Newman and Mr. Sanders:

VRG Properties Company appreciates the opportunity to comment on the Regional Water Quality Control Board's ("RWQCB") Draft Cleanup and Abatement and Monitoring and Reporting Program Orders (Former E-Z Serve#100875, 1017 Douglas Blvd, Roseville, Placer County, LUSTIS #310124) (collectively referred to hereafter as the "Draft CAO"). We are particularly appreciative of the RWQCB granting us an extension until November 15, 2007 to review and comment on the Draft CAO. As this is an older site, for which we have no contractual environmental liability, our records were in storage and had to be shipped from California to San Antonio for review. As you can appreciate, this took some time, and therefore, the additional time you granted allowed us the opportunity to complete our review of the Draft CAO by November 15th.

After review of the Draft CAO and our limited records of the site, we have identified three main aspects of the Draft CAO that warrant comment. These include: (1) the correct corporate entity that should be named in the CAO; (2) it should be clear that the primary responsible parties, Restructure Petroleum Marketing Services, Inc. ("RPMS") and JEM1, LLC ("JEM1"), are responsible for undertaking all necessary site assessment, sampling, monitoring, and remedial actions required under the CAO; and (3) the CAO should not prematurely establish clean up levels because many relevant factors, some known and some unknown, need to be taken into consideration in setting the levels. Our detailed comments on each of these three main aspects of the Draft CAO are presented below.

One Valero Way • San Antonio, Texas 78249
Post Office Box 696000 • San Antonio, Texas 78269• (210) 345-2871 • Facsimile (210) 353-8363
Darren.Stroud@Valero.com

EXHIBIT A

Correct Corporate Entity

From the onset, it should be noted that we are surprised to be named in the Draft CAO, considering as you have correctly noted on Page 1, Paragraph 2, of the Draft CAO, and we have confirmed, that Autotronic Systems, Inc. ("ASI") as part of the January 1985 sale and lease transfer agreement, transferred all assets, liability, and environmental liability to EZ Serve Inc., which was in turn acquired by RPMS. Accordingly, we have no contractual environmental liability for this site and have not done any site assessment, groundwater monitoring, and/or remedial work on the site since around the time of the sale and lease transfer in 1985.

However, if we are being named for regulatory purposes, due to a release that may have occurred during ASI's lease and operation of the site, which we are still reviewing from a regulatory responsibility perspective, then Valero Energy Corporation is not the correct corporate entity that should be named in the CAO. The correct corporate entity should be VRG Properties Company. The following provides a brief discussion as to the relationship between ASI, Diamond Shamrock, Sigmor, Diamond Shamrock Corporation, Ultramar Corporation, Ultramar Inc., and ultimately VRG Properties Company.

ASI, a Delaware corporation incorporated on February 14, 1969, has not merged out of existence, and is still a viable corporation with operating assets in Texas and Colorado. ASI did cease operating in California in August of 1989, at which time it surrendered its authority to transact business in California originally filed in March of 1969. However, ASI has submitted CA UST Fund claims in recent years for retail stations that it formerly operated in California. Many of these claims are currently pending with the UST Fund.

The business name "Diamond Shamrock" was associated with the oil and gas and chemical businesses, which originated from the merger in 1967 of Diamond Alkali Company, a chemicals company Headquartered in Cleveland, Ohio, and The Shamrock Oil and Gas Corporation, headquartered in Amarillo, Texas. The surviving company was named Diamond Shamrock Corporation, and continued to operate these two core business units under that name.

In May of 1978, the Board of Directors and Shareholders of ASI authorized the Agreement and Plan of Merger by which ASI merged with and into Sigmerge Co., a wholly-owned subsidiary of Sigmor Corporation, the largest retail jobber of Diamond Shamrock. Sigmerge Co. subsequently changed its name to ASI, and as a result of the merger, ASI had become a wholly-owned subsidiary of Sigmor Corporation.

In December of 1982, Sigmor Corporation merged with and into DSC Merger Company, a wholly-owned subsidiary of Diamond Shamrock Corporation. DSC Merger Company subsequently changed its name to Sigmor Corporation, and as a result of the merger, Sigmor Corporation had become a wholly-owned subsidiary of Diamond Shamrock Corporation. At this

time, Diamond Shamrock Corporation also became the ultimate parent of ASI, who remained a wholly-owned subsidiary of Sigmor Corporation.

In 1987, Diamond Shamrock, Inc., a subsidiary of Diamond Shamrock Corporation, was spun-off, that is, the shares of Diamond Shamrock, Inc. had been listed on the New York Stock Exchange, and as a result, Diamond Shamrock, Inc. became an entirely separate, publicly traded company. Just prior to that spin-off, all assets of Diamond Shamrock Refining and Marketing Company ("DSRMC"), and all of the operating subsidiaries operated by DSRMC, which included Sigmor Corporation and ASI, had been conveyed to Diamond Shamrock, Inc. Diamond Shamrock, Inc. was essentially a holding company, and by the early 1990s, all refining assets were owned and operated by Diamond Shamrock Refining Company, L.P. and virtually all other "Diamond Shamrock" businesses, except the chemical businesses which remained under Diamond Shamrock Corporation, but including the retail operations of Sigmor Corporation and ASI, were owned and operated by DSRMC. Diamond Shamrock Refining Company, L.P. and DSRMC were both wholly-owned subsidiaries of Diamond Shamrock, Inc. ASI remained a wholly-owned subsidiary of Sigmor Corporation.

In December, 1996, Diamond Shamrock, Inc. merged with Ultramar Corporation, and the surviving company was named Ultramar Diamond Shamrock Corporation ("UDS"). Ultramar Inc. was a wholly-owned subsidiary of Ultramar Corporation, and it owned several refineries in California as well as hundreds of retail gasoline service stations within the State of California. At this time, ASI and Ultramar Inc. became affiliates sharing the same ultimate parent corporation, UDS. On December 31, 2001, UDS merged with Valero Energy Corporation with Valero Energy Corporation as the surviving entity. As a result of this merger, all of the subsidiaries and operating companies of UDS became subsidiaries and operating companies of Valero Energy Corporation, including Sigmor Corporation, ASI, and Ultramar Inc.

However, on June 1, 2007, Valero Energy Corporation internally reorganized. As a result of this reorganization, all operating retail assets and refinery assets were separated into specific operating subsidiaries. Prior to the reorganization, both refinery and retail assets were controlled by the same subsidiary. After the reorganization, there were specific retail and refinery subsidiaries and the assets were separated.

More specifically, as a result of this reorganization, all ASI closed sites in California, were transferred to VRG Properties Company on June 1, 2007. One of the purposes of this separately formed corporation is to manage remediation of all closed retail sites or divested retail sites of ASI.

Accordingly, based on the ASI and VRG Properties Company relationship discussion above, we request that to the extent we are named in the CAO as a non-primary responsible party, that the correct corporate entity of VRG Properties Company be used. Please make this

correction to all pages in the Draft CAO, including the headers, and the Monitoring and Reporting Program portion of the Draft CAO.

Additionally, if VRG Properties Company is named in the CAO, all correspondences, including the CAO, and copies of any documents generated by the primary responsible parties, RPMS and JEM1, as a result of the CAO, should be directed to either Mr. Shay Wideman or Mr. Robert Ehlers at the address below.

One Valero Way
Post Office Box 696000
San Antonio, Texas 78269-6000

As indicated in the attached "Power Of Attorney For A Claim To The Underground Storage Tank Cleanup Fund," Mr. Wideman and Mr. Ehlers have the power of attorney to act on behalf of VRG Properties Company.

Clarification on Primary Responsible Parties Obligations

As noted above, we are surprised to be named in the Draft CAO, considering we have no contractual environmental liability for the site. If we are being named for regulatory purposes, the CAO should be clear that VRG Properties Company is not a primary responsible party and that the primary responsible parties, RPMS and JEM1, are required to undertake all necessary site assessment, sampling, monitoring, and remedial actions under the CAO.

Unfortunately, the Draft CAO is not clear on this important point. The following table bears this out and notes our comments as to how the Draft CAO should be corrected to make this clear.

Draft CAO Inconsistencies Regarding Primary Responsible Parties' Responsibilities

Page(s)	Heading(s)	Paragraph(s)	Comment(s)
Page 2	N/A	Paragraphs 3 and 4	Indicates that RPMS and JEM1 are primary responsible parties.
Page 7	Required Actions, Introductory Text	N/A	Appears to direct RPMS and JEM1 to undertake a number of site assessment, sampling, monitoring, and remedial actions.
Page 8	Site History	Paragraph 3	The term "Discharger" is used, which implicates VRG Properties Company as part of the "Required Actions." On March 5, 2004, ASI sent a letter to Mr. Jim Munch of the RWQCB attaching several documents that showed the assumption of all environmental liability for the site by EZ Serve and provided a synopsis of the history of the site. For your convenience, we are

Page(s)	Heading(s)	Paragraph(s)	Comment(s)
			providing a copy of this letter along with it attachments for your records. We are also attaching some other relevant documents that we found in our limited records pertaining to correspondences with the RWQCB concerning groundwater monitoring, notification of the lease transfer and sale to the original property owners, and a redacted memo providing some additional history. This memo has been redacted as it discusses other sites not relevant to the CAQ. Accordingly, based on our review of our limited records, this is all the information that we have on this older site as to its ownership and history. Accordingly, we believe we have satisfied Paragraph 3, and therefore, should be removed from this "Required Action."
Pages 8 through 11	Investigation/Remediation, Risk Assessment, Public Participation, Ground Water Monitoring , and General Requirements	All Paragraphs	Although these sections appear to be subheadings under "Required Actions," which the introductory text appears to order RPMS and JEM1 to undertake a number of number of site assessment, sampling, monitoring, and remedial actions, because of the intervening subheading "Site History", which uses the term "Discharger" and implicates VRG Properties Company as part of the "Required Actions", it is not clear whether the subsequent requirements under the Investigation/Remediation, Risk Assessment, Public Participation, Ground Water Monitoring, and General Requirements subheadings would also implicate VRG Properties Company. Accordingly, we believe that the CAO should be clear for the Paragraphs under these headings that the "Required Actions" are to be completed by RPMS and JEM1. This can be accomplished by simply removing the term "Discharger" from Page 8, Paragraph 3, under "Site History," as discussed above, as VRG Properties Company is providing the requested ownership and history information with this letter.
Pages 1 through 4, Monitoring and Reporting Program portion of the Draft CAO	Introductory Text, Groundwater Monitoring, and Reporting	Paragraph immediately preceding Groundwater Monitoring, and all paragraphs under Groundwater Monitoring and Reporting	The term "Discharger" is used, throughout this document, which implicates VRG Properties Company as part of the required Groundwater Monitoring and Reporting requirements. Starting with the Paragraph immediately preceding Groundwater Monitoring, and all paragraphs under Groundwater Monitoring and Reporting, the term "Discharger" should be removed and the following changes made. Similar to the Draft CAO, this document should have introductory Paragraphs that indicate that that RPMS and JEM1 are primary responsible parties. Similar to the Draft CAO, this document should have a

Page(s)	Heading(s)	Paragraph(s)	Comment(s)
			"Required Actions" section that has introductory text that directs RPMS and JEM1 to undertake all necessary Groundwater Monitoring and Reporting actions. Under this new section, Groundwater Monitoring and Reporting would be separate subheadings directing RPMS and JEM1 to undertake the required specific groundwater monitoring and reporting actions. This can be accomplished by affirmatively wording the current paragraphs under Groundwater Monitoring and Reporting similar to the Draft CAO (see Pages 8 through 11).

Clean Up Levels

To the extent that VRG Properties Company is being named in the CAO for regulatory purposes as a non-primary responsible party due to a release that may have occurred during ASI's lease and operation of the site, we are concerned that the wording of the CAO appears to already establish numeric clean up levels for various pollutants. While it may be the RWQCB's intent to merely reference existing water quality objectives for groundwater, the inclusion of numeric standards on Pages 5 and 6, Paragraph 20, and its accompanying table, and the wording of on Page 6, Paragraph 21, and the omission of any mention of the character of existing property use and existing groundwater in the area, implies that Paragraph 20, and its accompanying table, will be the numeric clean up levels for the site. It is important that the CAO preserve the ability to set the appropriate clean up levels after consideration of all the factors mentioned in Page 4, Paragraph 15 of the CAO, as revised below, and after, and based upon, the results of the reports generated by the CAO. Accordingly, the CAO should not prematurely establish clean up levels because many relevant factors, some known and some unknown, need to be taken into consideration in setting the appropriate levels.

We would suggest that the following Paragraphs, on Pages 4, 5, and 6 of the CAO, be modified to address this concern.

"15. The State Water Resources Control Board (hereafter State Board) has adopted Resolution No. 92-49, the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*. This Policy sets forth policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with State Board Resolution 68-16, the *Statement of Policy With Respect to Maintaining High Quality of Waters in California*. Resolution 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution 92-49 requires waste to be cleaned up to background, or if that is not ~~reasonable~~ feasible, ~~to an alternative level that~~

~~is the most stringent level that is economically and technologically feasible~~ to the best water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible, and in accordance with Title 23, California Code of Regulations (CCR) Section 2550.4. Any alternative cleanup level to background must (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Board."

"20. WQOs in the Basin Plan include numeric WQOs, e.g. state drinking water maximum contaminant levels (MCLs), and narrative WQOs, including the narrative toxicity objective and the narrative tastes and odors objective for surface and groundwater. Chapter IV of the Basin Plan contains the *Policy for Application of Water Quality Objectives*, which provides, among other things, that "[w]here compliance with narrative objectives is required (i.e., where the objectives are applicable to protect specified beneficial uses), the Water Board will, on a case-by-case basis, adopt numerical limitation in orders which will implement the narrative objectives." The numeric limitations for the constituents of concern are listed in the following table implement the Basin Plan WQOs. The Policies and procedures for establishing clean up levels are summarized in Paragraph 15 above.

(Table omitted).

The Regional Water Board will consider information with respect to impacts to waters of the State and all material and relevant information submitted by the Dischargers under this Order, then will set numerical clean up levels for the constituents above at the appropriate time consistent with State Water Board Resolution 92-49."

It should be noted that for Paragraph 20 above, the underlined recommended text is almost identical to text that has appeared in other CAOs issued by the Central Valley RWQCB. (See CAO No. R5-2006-0719, Paragraph 22).

In closing, we again would like to thank the RWQCB for giving us an opportunity to review and comment on the Draft CAO and affording us some additional time to complete this effort. We hope you find our comments helpful and to the extent that VRG Properties Company is named in the CAO for regulatory purposes as a non-primary responsible party, we look forward to seeing our comments incorporated into the final CAO. We stand committed to working cooperatively with the RWQCB and the primary responsible parties, RPMS and JEM1, on this site in our capacity as a non-primary responsible party.

Please contact me at (210) 345-2871, if you should have any questions concerning our comments.

Best regards,

Darren W. Stroud

Darren W. Stroud, Esq.
Counsel, Environmental, Safety &
Regulatory Affairs Law

Attachments (5)

cc: Ethan A. Jones, Valero, San Antonio (with attachments)
Robert C. Ehlers, Valero, San Antonio (with attachments)
Jack Ceccarelli, RPMS, Tampa (without attachments)
John McIntosh, JEM1, LLC, Roseville (without attachments)
Frances McChesney, Esq., SWRCB, Sacramento (without attachments)
Mark Owens, SWRCB, Sacramento (without attachments)
Shawn Vaughn, Delta Environmental Consultants, Inc., Rancho Cordova (without attachments)
Jim Mulligan, City of Roseville Environmental Utilities, Roseville (without attachments)
Tom Dodaro, Roseville Fire Department, Roseville (without attachments)

Attachment 1

Power of Attorney

Attachment 2

March 5, 2004 Letter to RWQCB

Attachment 3

March 16, 1991 Redacted Memorandum

Attachment 4

Various Letters to RWQCB

Attachment 5

Notification to Original Property Owner of Sale and Lease Assignment

EXHIBIT B

VRG PROPERTIES COMPANY

April 29, 2008

VIA EMAIL AND OVERNIGHT MAIL

Ms. Pamela Creedon, Executive Officer
California Regional Water Quality Control Board, Central Valley Region
Sacramento Main Office
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114
Phone: (916) 464-3291
Fax: (916) 464-4645

Re: Request For Stay, Review And Revision Of Cleanup And Abatement Order No. R5-2008-0702 And Monitoring And Reporting Program Order No. R5-2008-0809, And, If Needed, Request For Hearing Before Regional Water Quality Control Board For The Central Valley Region

Dear Ms. Creedon:

As you may know, VRG Properties Company ("VRG"), the successor in interest to the former lessee of property located at 1017 Douglas Boulevard, Roseville, California ("Roseville Site"), was recently named as a "Discharger" under the Regional Water Quality Control Board -- Central Valley ("Regional Board") Clean-up and Abatement Order No. R5-2008-0702 (the "CAO") and Monitoring and Reporting Program Order No R5-2008-0809 (collectively, the "Orders").[1] The inclusion of VRG as a Discharger under these Orders without any distinction between primary and secondary responsible parties was decidedly unexpected. Moreover, the compliance dates set in the Orders can only be properly characterized as arbitrary and capricious as they relate to VRG. Unfortunately, it appears the Regional Board's real reason for naming VRG as Discharger is not for any contamination that it or its predecessors may have released, but for the primary purpose of exerting leverage on the responsible Discharger.[2]

As a result, as discussed in more detail below, unless VRG is able to timely obtain, on or before May 5, 2008, the Executive Officer's agreement to stay or extend, and reconsider the

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[1] As described with greater particularity in VRG's November 15, 2007 Letter ("November 15, 2007 Letter") to the Regional Board Underground Storage Tank Division, VRG is the successor in interest to Autotronic Systems Incorporated ("ASI"), the former tenant at the Roseville Site until 1985. As further explained in the Orders and in the November 15, 2007 Letter, the fee owners of the Roseville Site at the time of the ASI lease were Raymond and Marjorie Lieser, who are succeeded in fee interest by JEM1, LLC ("JEM1"), current fee owner of the Roseville Site. The November 15, 2007 Letter, and all comments and requests for revisions presented to the Regional Board in that correspondence, are hereby incorporated by reference into this correspondence.

[2] As will be explained in greater detail later in this letter, VRG has twice been "blind-sided" by the actions of the Regional Board in regard to Orders for the Roseville Site. *See, e.g., Electronic Correspondence of October 26, 2007 from Paul Sanders to Darren W. Stroud* (attached hereto as Exhibit 1) ("Because Valero was blind-sided by this Draft CAO, here is a little info").

EXHIBIT B

requirements of the Orders (as they pertain to VRG), VRG will have no choice but to appeal the Orders to the SWRCB on or before May 5, 2008.

Background and Issues

The inclusion of VRG was unexpected because, among other things, VRG is not the successor in interest to the fee owners of the property. Further, in 1985 (well before the date that Valero Energy Corporation ["Valero"] became the parent entity for ASI),[3] ASI transferred to EZ-Serve, Inc. ("EZ-Serve") all its rights, duties, and liabilities as a tenant of, and operator at the Roseville Site, including expressly and unequivocally accepting all environmental liabilities and duties related to the Roseville Site and ASI's operations at the Site. Further, EZ-Serve, which is now succeeded in interest by Restructure Petroleum Marketing Services ("RPMS"), granted an express indemnity for all environmental liability associated with the Roseville Site to ASI, and ASI's successors and assigns, including VRG. Finally, during the period from at least 1985, when ASI transferred to EZ Serve all its rights, duties, and liabilities, to the present date, RPMS or its predecessor in interest, EZ Serve, has conducted all of the site investigation, monitoring, sampling, characterization, and remediation efforts at the Roseville Site and has obtained at least $500,000 in remediation funding from UST Cleanup Fund for those purposes and potentially is still eligible for another $1,000,000 from the Fund.[4]

According to Regional Board staff, VRG was named as a Discharger under the Orders, in large measure, as a means of putting pressure on the apparently recalcitrant RPMS, which Regional Board staff has, until recently, classified as the primarily responsible party to perform site investigation, monitoring, sampling, characterization, and remediation at the Roseville Site. (*See e-mail from Paul Sanders to Darren Stroud* dated October 16, 2007, in Exhibit 1). The designation of RPMS as primarily responsible for remediation of the Roseville Site has been appropriate because RPMS is the direct successor in interest to EZ Serve, which was the entity that both assumed all environmental responsibility and liability for the Roseville Site in 1985, and was responsible for the major release of hydrocarbons discovered at the site in 1992, which release has most prominently contributed to the current "condition of pollution" on the Roseville Site. (*See* CAO §§ 3, 5, and 6, pages 1-2). In addition, to date, RPMS has been funding and performing its clean-up duties at the Roseville Site as the primarily responsible party, albeit perhaps more slowly than desired by Regional Board staff. In fact, the Orders indicate that contamination levels have fallen significantly at the Roseville Site over time, and there is no indication in the Orders that any surface or groundwater beneficial use is currently imperiled by the existing petroleum constituents within the soil and groundwater.

Putting aside the question of whether it is proper for the Regional Board to name VRG under the Orders for the primary purpose of exerting leverage on the responsible Discharger[5], the

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[3] *See* CAO § 3, page 1, and the November 15, 2007 Letter and attached title-related documents.

[4] *See* CAO §§ 3, 6, 9 and 12, pages 1-2 and 4.

[5] We note, for example, that VRG has only limited knowledge of information and documentation related to EZ-Serve's releases at the Roseville Site from the three, ten-thousand gallon underground storage tanks that EZ-Serve operated. VRG also has limited access to information regarding the investigation or remediation efforts conducted

Regional Board should be aware that VRG supports the Regional Board's expressed goal of holding RPMS to its environmental responsibilities at the Site. (*See, e.g.*, November 15, 2007 Letter). RPMS is contractually responsible to VRG for ensuring that discharges and resulting contamination at the Roseville Site are cleaned up in accordance with all applicable laws, and VRG is willing to cooperate with the Regional Board to assure that RPMS fulfills its contractual obligation to VRG and its regulatory obligations to the Regional Board. Indeed, VRG is already putting pressure on RPMS to live up to its obligations, and it will continue to do so. (*See* April 28, 2008 Letter from Darren W. Stroud, Environmental Counsel, VRG, to Mr. Jack Ceccarelli, President, RPMS, attached as Exhibit 2). In addition, as other Valero companies have done in the past, VRG is ready and willing to meet with the Regional Board and other potentially responsible parties to assist in organizing and assuring that contractual and regulatory clean-up duties are properly performed for the Roseville Site.

While VRG wants to continue to work productively with the Regional Board to assure that RPMS closes the Roseville Site properly, the Regional Board's action in naming VRG as a Discharger, with identical responsibilities and the same compliance schedule under the Orders as RPMS, has placed VRG in a procedurally untenable position, and unfairly exposes VRG to liability for civil and criminal penalties as early as June 6, 2008 for any RPMS failure to comply with Regional Board requirements. VRG's position is procedurally untenable because it appears that the Orders may have been issued finally by the Assistant Executive Officer on April 3, 2008.[6] Despite prior correspondence with the Regional Board in late 2007 regarding VRG's comments upon a prior draft of the CAO, VRG did not receive any notice prior to April 3 that its November 15, 2007 comment letter had been disregarded by Regional Board staff, or that the final Orders were about to be issued. In fact, environmental personnel at VRG did not actually learn that the final Orders had been issued until April 11, 2008, though Valero may have received copies of the Orders as early as April 7, 2008. Under Cal. Water Code § 13330, VRG arguably must appeal the Orders to the State Water Resources Control Board ("SWRCB") no later than May 5, 2008 if VRG is to ensure that such an appeal is timely filed. While VRG prefers to reach agreement with the Regional Board regarding implementation of the Orders, VRG cannot risk losing its right to appeal the Orders because VRG cannot feasibly meet the compliance schedule set forth in the Orders (which requires, among other things, that VRG -- as a Discharger -- submit to the Regional Board a full site history and a revised corrective action plan. VRG must also implement the existing corrective action plan by June 6, 2008).

VRG's exposure to enforcement action and regulatory liability, as early as June 6, 2008, for failure to meet the specified compliance schedule, is unfair because the Regional Board knows that VRG has only an attenuated relationship to the Roseville Site. Any secondary

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to date. The Water Code gives the Regional Board significant enforcement authority not available to VRG, making the Regional Board a better enforcement entity than VRG vis-à-vis holding RPMS to its obligations at the Roseville Site.

[6] The actual date of issuance of the Orders is unclear. The Orders that can currently be obtained from GeoTracker indicate that the original was signed by Jack Del Conte, Assistant Executive Officer, and are dated June 3, 2008. Nevertheless, we must assume that the 30-day period for appeal to the SWRCB set forth in Cal. Water Code § 13330 will expire on May 5, 2008.

discharge by ASI, according to the CAO, is relatively minor (i.e, approximately 698 gallons over a three month period in late 1983). (*See* CAO §§ 5 and 6, page 2). VRG's potential exposure is further unfair because the Board failed in issuing the Orders to consider the hurdles that VRG must overcome to perform the requirements of the Orders as a "Discharger." These hurdles include VRG's lack of property rights and access to the Roseville Site, and lack of quick access to critical information about the Roseville Site.

Request for Stay and Review or Reconsideration of the Orders

Under these difficult circumstances, unless VRG is able to timely obtain, on or before May 5, 2008, the Executive Officer's agreement to stay or extend, and reconsider the requirements of the Orders (as they pertain to VRG), VRG will have no choice but to appeal the Orders to the SWRCB on or before May 5, 2008. Therefore, VRG requests that the Executive Officer stay the Orders or extend all due dates for compliance, as they pertain to VRG, until August 14, 2008, and agree to review the Orders for a period not to expire any later than June 14, 2008. At the end of the review period, the Executive Officer can either amend and re-issue the Orders as requested below, or the Regional Board can review and re-issue the Orders in their current form or with requested revisions. Given the non-urgent nature of the contamination conditions at the Site, the suggested stay or extension and review period suggested above will not create an increased risk of harm to human health or the environment.

This requested course of action will allow VRG and the Regional Board much needed time to work together with respect to clean-up of the Roseville Site by creating a new effective date for adoption of the Orders, relieving VRG of the looming May 5, 2008 deadline for appeal to the SWRCB. We respectfully suggest that the Executive Officer's actions to stay or extend, and grant review of the Orders (as they pertain to VRG) is appropriate in this situation because the compliance schedule imposed in the Orders on VRG (and not RPMS) is infeasible for VRG to meet, and the duties imposed on VRG (and not RPMS) are wholly inconsistent with VRG's extremely limited (or non-existent) liability for clean-up of the contamination at the Roseville Site.

Revisions to the Orders Requested Upon Review

After staying or extending all deadlines for compliance currently mandated under the Orders (as to VRG only) to dates on or after August 14, 2008, and agreeing to review the Orders, VRG respectfully requests that the Executive Officer take one of the following actions to address the concerns raised above:

1. Amend the requirements and compliance schedule identified in the Orders (as to VRG only) to clarify that VRG is not responsible for implementing the requirements of the Orders, unless and until RPMS or entities related to RPMS fail to do so, at which time an achievable and non-duplicative compliance schedule will be established for VRG's performance.

2. To the extent that the Executive Officer declines to amend or revise the terms of the Orders as requested above, refer this matter and VRG's requested amendments thereto, and schedule an evidentiary hearing before the Board for the next Regional Water Quality Control Board hearing on June 13-14, 2008.

The Requested Stay or Extension, Review, and Amendment of the Orders Are Necessary to Protect VRG's Procedural Due Process Interests

VRG, like the other named Dischargers, has substantial property interests that are potentially jeopardized via the issuance of the Orders. Decisions of the SWRCB indicate that the Executive Officer may issue a Clean up and Abatement order without a hearing based on the need to take immediate action to protect human health and the environment, but no such condition exists here. As noted in VRG's very cursory review to date of site assessment reports for the Roseville Site, the contamination appears to be contained, remedial actions taken to date have lowered the contamination levels in the groundwater beneath the site, and RPMS is proceeding with remedial actions. The SWRCB has explained that any potential short-term harm to the constitutionally protected interests of a named responsible party that might otherwise arise by virtue of an Executive Officer's "ex parte" action to issue a order in the absence of formal procedures, is ameliorated by the fact that named responsible parties are able to petition the Regional Board for modification of the order after issuance, or appeal the action of the Executive Officer to the SWRCB. (*See In the Matter of the Petition of BKK Corp.*, California State Water Resources Control Board, Order No. WQ 86-13 at p.5 (1986)). In *BKK*, the SWRCB explained that an adversely affected "responsible party" may obtain relief from an inappropriate designation as a responsible party or from inappropriate requirements in an order by: 1) commenting and requesting changes from the Executive Officer; 2) petitioning the Regional Board to decide whether the order at issue should be modified or withdrawn, or 3) appealing the decision of the Executive Officer (and/or the Regional Board if review is granted) to the SWRCB. The relief requested above from the Executive Officer is consistent with the State Board's guidance in *BKK*, and would facilitate resolution of this matter in a way that remedies some of the procedural irregularities that have plagued VRG's ability to craft a meaningful solution in this case.

Procedural irregularities in this case necessitate that the requested relief include consideration of the following issues:

1. VRG was provided inadequate time to comment upon the Draft Orders in November 2007. Valero, and its corporate subsidiary VRG, did not have any contact with the Roseville Site from approximately 1984 until October 25, 2007 when environmental personnel at VRG first received notice from the Regional Board that VRG's predecessor in interest, ASI, might be potentially responsible for a release of petroleum constituents at the Roseville Site over 23 years beforehand. VRG was given less than one month to compile and review potentially relevant records regarding its relationship to ASI and the Roseville Site from a warehouse half-way across the country prior to the November 15,

2007 informal regulatory deadline for comments on the initial Draft Orders. Such a limited timeframe for review, after 23 years and no prior involvement by VRG or Valero at the Site, on what the Executive Officer could likely agree is a fairly complicated set of circumstances, was an inadequate amount of time for VRG to evaluate the nature of the problem it faced under the draft Orders. Additionally, as previously noted, assurances of Regional Board staff in November of 2007 led VRG to believe that it was not the true target of the Regional Board's action under the Orders, and that Regional Board staff were committed to communicating regulatory decisions to VRG prior to their issuance. Accordingly, VRG did not request a hearing from the Regional Board or seek additional process at that time.

2. Substantive and material comments provided by VRG on the November 2007 draft Orders were ignored. Clean-up and Abatement Orders are adjudicative processes subject to review under the California Administrative Procedures Act. (*See* Michael A. Lauffer, Memorandum from Chief Counsel: Summary of Regulations Governing Adjudicative Proceedings Before the California Water Boards (August 2, 2006) at p. 2; *see also* Cal. Code Regs., tit. 23, §§ 648-648.8). To the extent that the Executive Officer chose not to accept VRG's substantive recommendations contained in the November 15, 2007 Letter, it was required to explain its rationale for so declining -- particularly where some of the revisions requested by VRG closely mirrored language utilized by the Regional Board in other Clean-up and Abatement Orders issued for other sites under its jurisdiction. Regional Board staff's failure to explain the rationale for ignoring VRG's suggested revisions, and indeed failing to communicate in any way with VRG after receiving the November 15, 2007 Letter and prior to issuing the "Final" Orders on or around April 3, 2008, violated the California Administrative Procedures Act and VRG's due process rights. Governmental processes, such as the development and issuance of the Orders, must proceed in full view of those parties potentially affected by such processes.

3. Inadequate notice of issuance of Final Orders. VRG found out about issuance of the Final Orders well after their adoption,[7] and has had inadequate time to respond and negotiate with both RPMS and Regional Board staff following the issuance of the Orders. Because the 30 day deadline under Cal. Water Code § 13330 for appeal to the SWRCB of the Executive Officer's Orders appears to run from the date of issuance, which arguably is April 3, 2008, VRG is effectively precluded

[7] VRG environmental personnel did not actually receive copies of the Final Orders, or any other notice of the Orders from the Regional Board until April 11, 2008, though Valero administrative support staff signed for receipt of the Orders on April 7, 2008. At no time, did Regional Board staff contact VRG by email or phone prior to or upon issuance of the Final Orders, even though contact information for VRG personnel was in the possession of Regional Board staff. The copies of the Orders are dated April 3, 2008. However, the final copies of the Orders that can currently be obtained from GeoTracker indicate that the original was signed by Jack Del Conte, Assistant Executive Officer, and are dated June 3, 2008.

from further meaningful negotiations with Regional Board staff and RPMS over the Orders until such time as the SWRCB appellate process has run its course (unless the Executive Officer or Regional Board agree to stay or extend, and engage in review and reconsideration of the Orders -- as they pertain to VRG -- as requested herein).

4. Inadequate opportunity to negotiate with other named Dischargers in the Orders. VRG recognizes that Regional Board staff wants VRG to put pressure on RPMS to perform the tasks that RPMS is obligated to undertake -- under applicable law and by contract -- at the Roseville Site. As previously discussed, VRG is willing to assist the Regional Board in this manner. Specifically, among other things, VRG has demanded RPMS performance under the lease transfer agreement and indemnity, and will assist the Regional Board in convening a meeting of potentially responsible parties to organize and assure effective and timely implementation of the Orders. However, more time is needed for VRG to leverage its relationship with RPMS, and the current version of the Orders is detrimental to getting RPMS to fulfill its regulatory responsibilities. Because VRG is designated as a Discharger under the Orders with the same responsibilities/liabilities as RPMS, RPMS now has every incentive *not to implement corrective and remedial actions and not to cooperate with the Regional Board or VRG* in the hopes that regulatory responsibility will shift to VRG. Likewise, if VRG is to be held equally liable by the Regional Board no matter what action it takes, it has less incentive to work with the Regional Board in reaching the mutually desired goal of compelling RPMS to meet its legal obligations at the Roseville Site.

5. No indication of immediate threat to the community or environment that justifies withholding procedural safeguards. The Orders do not indicate why the "orderly and coordinated effort" mandate of SWRCB policy 92-49 could not be followed under the facts of this case. The Orders indicate that contamination levels have fallen significantly at the Roseville Site, and there is no indication in the Orders that any beneficial use of any surface or groundwater is imperiled by current conditions. The CAO's oblique references in Sections 8-10, page 3, to potential installation of new municipal supply wells within the City of Roseville at some future date, and the presence of "Dry Creek" approximately 1,500 feet away, do not establish that the relatively minor plume of petroleum constituents within the soil and groundwater at the Roseville Site actually constitutes a threat to municipal water supply or riparian beneficial uses of surface groundwater. Indeed, the Orders never state that beneficial uses are imperiled. The CAO's assertion in Section 8, page 3, that petroleum constituents in the groundwater "remain well above established numerical water quality objectives" is also puzzling. A cursory review of the Central Valley Basin Plan reveals no established numeric water quality objectives for any of the constituents listed in Paragraph 8 of the CAO, and the Regional Board has not complied with Water

Code §13263 and §13241 requirements for the setting of site-specific water quality objectives at the Roseville Site.[8] Thus, there appears to be adequate time for the Executive Officer to stay or extend the Orders as they pertain to VRG, and to review and reconsider the role of each Discharger in the cleanup. In other words, there is no compelling impediment to staying or extending the Orders *vis-à-vis* VRG until further negotiations can produce an agreement regarding proper roles, responsibilities, and compliance schedules for each party going forward.

6. The compliance schedule for tasks under the Orders, as they apply to VRG is entirely infeasible. The Regional Board is required to provide a reasonable amount of time for a discharger to carry out the responsibilities mandated in an order. Here, the first compliance deadlines for completion of significant substantive requirements, including the preparation of complex studies and implementation of corrective action plan actions, are due under the Orders by no later than June 6, 2008. VRG, an entity that has had no involvement with the Roseville Site for at least 23 years, currently has no site access rights necessary to perform the tasks articulated in the Orders. The Orders require VRG to perform complex tasks in an inappropriately short time frame including, *inter alia*: preparation of a detailed site chronology (CAO § 3, page 8); completion and preparation of a report on the results of the "HVDPE and AS Test" arising out of a February 14, 2008 directive to prepare a workplan that was never sent to VRG (CAO § 4, page 8); development and implementation of a "modified Corrective Action Plan" (CAO § 4, page 8); and development and implementation of a work plan to conduct a human health risk assessment at the Roseville Site (CAO § 4, page 10). Aside from the absolute impossibility of completing these complex tasks (each of which could potentially take months to prepare) by the date specified in the Orders, VRG would be duplicating actions already undertaken by RPMS. Accordingly, with no evidence indicating why the selected compliance dates are so truncated as applied to VRG, and no possibility for VRG to feasibly comply with such dates, the compliance dates set in the Orders can only be properly characterized as arbitrary and capricious -- thereby necessitating the relief requested by VRG.

The Requested Stay or Extension, Review, and Amendment of the Orders Are Necessary Because the Obligations Imposed on VRG Are Not Supported by Substantial Evidence in the Record

Putting aside the serious procedural concerns raised above, VRG notes that even if all necessary procedure has been observed, the Orders' designation of VRG as a responsible party, with identical clean-up obligations and compliance deadlines as RPMS, is arbitrary and capricious under the circumstances of this case.

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[8] More detailed comments pertaining to the requirements for establishing numeric water quality objectives in an enforcement action were previously provided to the Regional Board in the November 15, 2007 Letter.

Any finding made in a Clean-up and Abatement Order regarding an entity's status as a "responsible party" must be premised upon substantial evidence in the record. (*See In the Matter of the Petition of Exxon Company,* California State Water Resources Control Board, Order No. WQ 85-7 at pp. 10-11 (1985)). Notwithstanding the averments of Regional Board staff to the contrary, a Regional Board is not required to name all potentially responsible dischargers under a Clean up and Abatement Order, and indeed in some cases would violate State Board policy by naming every conceivable potentially responsible party as a "discharger." (*See generally* SWRCB Resolution No. 92-49 at ¶ ¶ I.B, III.B). As a prerequisite to naming VRG as a Discharger, Regional Board staff were required to demonstrate that VRG (and/or its predecessors in interest from whom environmental liability may be imputed) caused or permitted the current contamination of the Roseville Site.

Notwithstanding the rudimentary factual allegations made in CAO §§ 4-5, at page 2, it is not clear whether the predecessor of VRG, ASI, significantly caused or contributed to the current condition of pollution identified at the Roseville Site so as to justify being named as a "Discharger" under the CAO with clean-up obligations equal to those of RPMS.

Moreover, monitoring well data from the mid-1980s shows non-detects or a "minute quantity" of petroleum in groundwater in the immediate vicinity of ASI's relatively small fuel line leak, and a geohydrologic study conducted by ASI indicated minimal risk of adverse impacts to groundwater. (*See* Attachments to November 15, 2007 Letter). A limited impact from the ASI spill in 1983 is not surprising given the limited nature and duration of the spill (698 gallons over a three month period). Additionally, the amount of the spill, estimated from sales records, may be overstated as a result of failure to consider fuel loss associated with fuel lost as vapor to the atmosphere during dispensing, leakage from the nozzle before and after vehicle fueling, or inaccurate calibration of the pumps. Moreover, any fuel spilled in 1983 has had approximately 25 years to naturally attenuate and vaporize from the soil to the air. Thus, there is insufficient evidence in the record that the current site contamination was caused by anything other than EZ-Serve and their long term operation of, releases from, and abandonment of three underground storage tanks at the Roseville Site.

Requiring VRG to undertake the identical responsibilities under the Orders to that of RPMS, the successor in interest to EZ-Serve, is not an outcome supported by substantial evidence in the record. It would violate SWRCB Resolution No. 92-49 while yielding an inequitable and arbitrary/capricious result. There is no basis reflected in the Orders or other information currently available to VRG for the Regional Board to mandate that VRG conduct a duplicative investigation and cleanup, conduct identical monitoring, and submit identical reports for the Roseville Site when RPMS is a solvent responsible party, with access to additional UST Cleanup Fund proceeds, that is already conducting all required work (albeit at a pace that apparently is deemed inappropriate by Regional Board staff). Such duplicative action wastes resources without improving environmental benefit, yet that is the result that VRG's compliance with the Orders in their current form would yield. Indeed, requiring VRG to perform tasks associated with duplicative site assessment, monitoring, sampling, characterization,

investigation, and remediation when RPMS is likely to have its "proposed remedial system up and running shortly,"[9] not only would be entirely duplicative and wasteful, but may also actually delay environmental remediation at the Roseville Site. Moreover, requiring VRG to cover the same ground already covered by RPMS in existing site characterization and investigation reports and workplans violates the step-by-step process and consideration of economics and efficiency mandated in clean-up efforts by SWRCB policy. (*See, e.g.*, SWRCB Resolution No. 92-49 at ¶ III.B, directing Regional Boards to "[c]onsider whether the burden, including costs, of reports required of the discharger during the investigation and cleanup and abatement of a discharge bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.")).

The Orders Should Be Amended to Assure that VRG Is Only Responsible for Implementation In the Event that the Regional Board Finds that RPMS is Unable or Unwilling to Comply

To the extent that VRG is properly included as discharger under the Orders, equity—and SWRCB precedent - suggest that VRG should not be apportioned a "substantial portion" of the costs or duties under the Order. (*See In the Matter of the Petitions of the County of San Diego, et al,* Order No. WQ 96-2 at page 12 n. 8). Because it appears that ASI's contribution to the condition of waste at the Roseville Site was minimal at best, and because RPMS is financially capable of (and contractually bound) to finish any additional tasks related to remediation of the Site, the most sensible solution is for the Regional Board, to the extent it chooses to retain VRG as a discharger under the Orders, to impose the obligations contained in the Orders on VRG only if RPMS becomes incapable of, or refuses to perform, its obligations under the Orders. By making RPMS' failure a condition to imposing an obligation on VRG, VRG and the Regional Board would then have sufficient leverage to induce RPMS to perform the tasks under the Orders under the threat of both direct and focused regulatory enforcement by the Regional Board and civil litigation by VRG to enforce the lease transfer agreement and indemnity provisions. By applying the Orders to VRG only where RPMS is unable or unwilling to undertake a required task, the Regional Board avoids providing incentive to RPMS to violate the Orders, and obtains the additional leverage that VRG can apply to RPMS without creating the unnecessary duplicative and costly effort that is forbidden by Resolution 92-49. Indeed taking this approach is fully consistent with Resolution 92-49's goal to facilitate environmentally responsible action in the absence of direct Regional Board regulatory oversight. (*See, e.g.*, SWRCB Resolution No. 92-49 at ¶ II.B, encouraging Regional Boards to "identify investigative and cleanup and abatement activities that the discharger could undertake without Regional Water Board oversight.")).

Amendments Requested to Specific Sections of the CAO

VRG, as previously indicated, reincorporates the objections and requested revisions that it previously submitted in the November 15, 2007 Letter. In particular, we note that CAO §§ 18

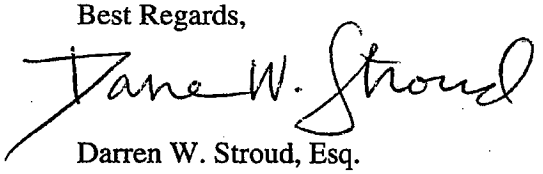
[9] *See* Exhibit 1.

and 23, pages 11 and 12, should be revised along the lines suggested on pages 6-7 of the November 15, 2007 Letter, and the revisions described on pages 5-6 of the November 15, 2007 Letter should be incorporated into the Orders to clarify that VRG, to the extent it is to remain subject to the Orders, is only required to act where RPMS and JEM1 fail to do so. In the event the Executive Officer grants a stay or extension, and review of the Orders, VRG requests an opportunity to supply a copy of the Orders redlined to show recommended changes, and to suggest a feasible compliance schedule for VRG's implementation of requirements of the Orders in the event that RPMS and JEM1 fail to properly perform their clean-up duties.

In closing, VRG wants to emphasize its desire to work with the Regional Board to reach a mutually amenable resolution that gets the Roseville Site cleaned up in an expedient manner premised upon sound science. However, we again reiterate that VRG will be forced to exercise its right to petition the SWRCB for review of the Orders in the absence of the Executive Officer's grant of a stay or extension, and review of the Orders, because the compliance schedule set forth in the Orders cannot be feasibly met by VRG, and the Orders unfairly shift responsibility and liability for cleanup from RPMS to VRG. Because VRG hopes to work with the Regional Board staff in good faith, an appeal to the SWRCB would be a waste of both Regional Board and VRG resources. But at this point, VRG is left with no other alternative. If extension/stay and review are granted, VRG hopes to meet with the Executive Officer, other appropriate Regional Board staff, and representatives of potentially responsible parties, including RPMS to ensure that the parties reach a resolution that assures timely and appropriate cleanup of the Roseville Site on fair and equitable terms.

Please contact me at (210) 345-2871 or Darren.Stroud@Valero.com at your earliest possible convenience to discuss this matter. I look forward to working with you to find a mutually amenable resolution.

Best Regards,



Darren W. Stroud, Esq.
Counsel, Environmental, Safety &
Regulatory Affairs Law

Attachments (2)

cc: Paul Sanders, Regional Board -- Central Valley
Jack Del Conte, Assistant Executive Officer Regional Board -- Central Valley
Craig Johns, California Resource Strategies

EXHIBIT 1

Stroud, Darren

From: Paul Sanders [psanders@waterboards.ca.gov]
Sent: Friday, October 26, 2007 3:39 PM
To: Stroud, Darren
Subject: Draft CAO - Former E-Z Serve#100875, 1017 Douglas Blvd,Roseville

Darren,

Because Valero was blind sided by this Draft CAO, here is a little info:

Although I believe that Restructure Petroleum Marketing Services is the primary reasonable party, all potential responsible parties are to be named in a Cleanup and Abetment Order, and thus how Valero got named.

Restructure Petroleum Marketing Services is in the UST Cleanup Fund and has done some site work, and will likely continue to complete site work. According to their environmental consultant "Delta" they should have the site's proposed remedial system up and running shortly. However, they have repeatedly failed to comply with our directives, and thus why we have drafted a CAO.

My hope is that since we had to name Valero, Valero can put pressure on Restructure Petroleum Marketing Services to complete work as required by our office, so that no additional enforcement action, beyond a CAO is necessary.

Paul